

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists due to the detection of West Indian fruit fly (*Anastrepha obliqua*), in California. On September 13, 2016, (PDR # 190P06060231), one adult West Indian fruit fly was unexpectedly trapped in the Compton area of Los Angeles County. The detection of one West Indian fruit fly is indicative of an incipient infestation of West Indian fruit fly in the Compton area of Los Angeles County. West Indian fruit fly is a destructive insect pest of many commercial agricultural crops. Fruits (including mangos, guavas, and pears), many kinds of vegetables, and the fruiting bodies of many wild and ornamental plants are known to be hosts or possible hosts of the West Indian fruit fly. Larval feeding reduces the interior of fruit to a rotten mass. Egg punctures admit decay organisms which cause tissue breakdown. Damaged fruit is generally unfit for human consumption. This unexpected occurrence of West Indian fruit fly in the Compton area meets the national and international standards that mandate immediate intensive delimitation and treatment activities in the Compton area of Los Angeles County. The cost of not eradicating West Indian fruit fly in California could result in crop losses, additional pesticide use, and quarantine requirements. Thus, this presents a clear, imminent danger to the agricultural industry in California. This occurrence of West Indian fruit fly in Los Angeles County meets the state and the federal trigger for eradication response in this county. Therefore, the Department is proposing to adopt Section 3591.28, West Indian fruit fly Eradication Area to include Los Angeles County. If a state agency makes a finding that the adoption (or amendment) of a regulation is necessary to address an emergency, the regulation may be adopted (amended) as an emergency regulation. Government Code Section 11346.1(b)(1).

Emergency Defined

“Emergency’ means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare,” Government Code Section 11342.545. If a state agency makes a finding that the adoption of a regulation is

necessary to address an emergency, the regulation may be adopted as an emergency regulation, per Government Code Section 11346.1(b)(1).

In this document the Department is providing the necessary specific facts demonstrating the existence of an emergency and the need for immediate action to prevent serious harm to the general welfare of the citizens of California, pursuant to Government Code Section 11346.1(b)(2).

Government Code Section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency.

Government Code Section 11346.1(a)(3) provides that if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with public interest, an agency is not required to provide notice pursuant to Government Code Section 11346.1(a)(2) (See Evidence of Emergency).

The Secretary believes that this emergency clearly poses such an immediate, serious harm that delaying action to give the notice pursuant to Government Code Section 11346.1(a)(2) would be inconsistent with the public interest, within the meaning of the Government Code Section 11349.6(b).

The information contained within this finding of emergency also meets the requirements of Government Code Sections 11346.1 and 11346.5.

California Environmental Quality Act

A Statewide Plant Pest Prevention and Management Program Environmental Impact Report (EIR) was prepared by the Department as the lead agency under the California Environmental Quality Act. The EIR addresses the potential impacts and mitigations when

implementing the Statewide Plant Pest Prevention and Management Program activities related to Fruit Flies.

The EIR may be accessed at the following website:

<http://www.cdfa.ca.gov/plant/peir/>.

Evidence of Emergency

The West Indian fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. The West Indian fruit fly detected in the Compton area of Los Angeles County has triggered the need for eradication regulation in the area immediately surrounding the detection. Eradication authority is necessary for the entire Los Angeles County to prevent the expansion of the eradication area and further costs to the area's agricultural industry. Should the Department not take these actions; the West Indian fruit fly could cause direct catastrophic losses to California's affected agricultural industries and significant harm to the State's economy through cost impacts or prohibitions to interstate commerce and exports of host commodities.

If the fly were allowed to spread and become established in host fruit production area, California's agricultural industry would suffer losses due to increased pesticide use, decreased production of marketable fruit, and loss of market if the United States Department of Agriculture (USDA) or other states or countries enact quarantines against California products which can host and carry the fly.

Under international trade agreements, to which the United States are a signatory, the USDA is obligated to notify interested foreign and domestic trading partners about West Indian fruit fly host commodities produced in California. Trade impacts may extend beyond host commodities produced within the regulated area or in the State of California. Some countries may not accept any West Indian fruit fly host material produced in, packed or repacked within a regulated area even if it originated in another state. Additionally, any host commodities transiting a regulated area cannot unnecessarily stop and must be

sealed and enclosed in a manner to exclude the possible entry of the fly into the host shipment. The introduction of exotic fruit flies, such as West Indian fruit fly, is always the subject of the regional and specific bilateral trade discussions which occur between the USDA and our trading partners. The expeditious implementation of exotic fruit fly eradication activities is key to ensure qualifying host commodities produced in or packed anywhere in California can also continue to move in international trade. Our trading partners are astute and have used the internet in the past to review our State regulations and compare them to the information they receive from the USDA. Therefore, it is necessary to adopt Section 3591.28 on an emergency basis.

Project Description

The West Indian fruit fly is an alpha-ionol and cade oil attracted fruit fly. This adoption will provide authority for the State to perform specific detection, control and eradication activities against the West Indian fruit fly in Los Angeles County. It will also establish a host list and a new eradication regulation. This authority includes, “the searching for all stages of the fly by visual inspection, the use of traps, or any other means.” It is immediately necessary to perform these activities and eradication treatments within the Compton area of Los Angeles County. To prevent spread of the fly to noninfested areas, to protect California's agricultural industry and urban environment, treatment activities against the fly will begin upon the notification of affected parties. The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts the standard for the one fly as the trigger for an eradication response. The Food and Agriculture Organization of the United Nations has a similar international standard established.

The proposed adoption of this eradication regulation will proclaim Los Angeles County as an eradication area, establish a host list, and create a new eradication area regulation. The entire County of Los Angeles is proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for determining if an infestation exists and exterminating an established West Indian fruit fly infestation. Fruit may have already been moved from an infested area to another portion

of the county. To enable rapid treatment of this small infestation without frequent amendment of the regulation, the entire county should be established as an eradication area.

The Department also relied upon the following information:

Pest and Damage Record # 190P06060231 California Department of Food and Agriculture, Plant Health and Pest Prevention Services.

“West Indian fruit fly, *Anastrepha obliqua*, Host List, September 22, 2016.

“WIFFLifecyle2016-9-14-16.” West Indian Fruit Fly Lifecycle Projection. September 14, 2016.

“Action Plan for Caribbean Fruit Fly *Anastrepha suspensa* (Loew). Revised April 2000. California Department of Food and Agriculture, Plant Health and Pest Prevention Services, Pest Detection/Emergency Projects Branch.

Authority and Reference Citations

Section 3591.28: West Indian fruit fly

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 5761, 5762, 5763 and 5764, Food and Agricultural Code.

Informative Digest

The Secretary is proposing to adopt this regulation pursuant to the authority in Food and Agricultural Code (FAC) Section 407, “the director may adopt such regulations as are reasonably necessary to carry out the provisions of this code which he is directed or authorized to administer or enforce,” and FAC Section 5322, “the director may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in his or her opinion necessary to circumscribe and exterminate or prevent the spread of any pest

which is described in FAC Section 5321. The eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest (FAC Section 5761). . Any expenditures for the replacement nursery stock shall not exceed an amount which is budgeted for the purpose or approved by the Director of Finance (FAC Section 5764).

Section 3591.28, West Indian fruit fly Eradication Area

This adoption of Section 3591.28 will establish Los Angeles County as an eradication area for the pest *Anastrepha obliqua* (West Indian fruit fly), add a host list, and create a new eradication area regulation. The effect of this adoption will be to provide authority for the State to perform control and eradication activities against West Indian fruit fly in Los Angeles County to prevent spread of the fly to noninfested areas to protect California's agricultural industry.

The existing law obligates the Secretary to investigate and determine the feasibility of controlling or eradicating pests of limited distribution but establishes discretion with regard to the establishment and maintenance of regulations to achieve this goal. The amendment of this regulation benefits industries and other host materials (nursery, fruit for domestic use and exports, packing facilities) and the environment (urban landscapes) by having an eradication program to prevent the artificial spread of West Indian fruit fly over long distances.

This adoption provides the necessary regulatory authority to prevent the artificial spread of a serious insect pest which is a mandated statutory goal.

Anticipated Benefits from This Regulatory Action

Existing law, FAC section 403, provides that the department shall prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.

Existing law, FAC section 407, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of this code which she is directed or authorized to administer or enforce.

Existing law, FAC section 5321, provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this State and determine the probability of its spread, and the feasibility of its control or eradication.

Existing law, FAC section 5322, provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and such other regulations as are in her opinion necessary to circumscribe and exterminate or prevent the spread of any pest which is described in FAC section 5321.

FAC Section 401.5 states, “the department shall seek to protect the general welfare and economy of the state and seek to maintain the economic well-being of agriculturally dependent rural communities in this state.” The adoption of this regulation is to prevent the West Indian fruit fly establishing in California. The overall California economy benefits by the adoption of this regulation which is intended to prevent West Indian fruit fly from becoming generally distributed in California.

Californians, national and international consumers of California West Indian fruit fly host materials benefit by having high quality fruit, nuts, vegetables, and seeds available at lower cost. It is assumed that any increases in production costs will ultimately be passed onto the consumer.

The adoption of this regulation benefits homeowners who grow fruit, nuts, vegetables, and seeds for consumption and host material which is planted as ornamentals in various rural and urban landscapes by preventing damage to these hosts and the need for them to be treated to mitigate infestations of West Indian fruit fly.

The Department is the only agency which can implement plant eradication areas. As required by Government Code Section 11346.5(a)(3)(D), the Department has conducted an evaluation of this regulation and has determined that it is not inconsistent or incompatible with existing state regulations.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3591.28 does not impose a mandate on local agencies or school districts. All eradication activities shall be conducted by the Department.

Cost Estimate

The Department has also determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.